

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7671

BILL NUMBER: SB 516

NOTE PREPARED: Jan 8, 2007

BILL AMENDED:

SUBJECT: Sex Offenders.

FIRST AUTHOR: Sen. Bowser

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: The bill provides that a person commits child molesting if the person has sexual intercourse with or fondles a child who is less than 12 years of age and is at least 5 years younger than the person. (Under current law, the offense is committed by having sexual intercourse with or fondling a child less than 14 years of age.)

The bill also provides that a person commits sexual misconduct with a minor if the person is at least 18 years of age and has sexual intercourse with or fondles a child at least 12 but less than 16 years of age who is at least 5 years younger than the person. (Under current law, the offense is committed when a person at least 18 years of age has sexual intercourse with or fondles a child at least 14 but less than 16 years of age.)

It creates a defense to certain prosecutions for: (1) child exploitation; (2) possession of child pornography; (3) vicarious sexual gratification; and (4) performing sexual conduct in the presence of a minor.

Effective Date: Upon passage.

Explanation of State Expenditures: Under current law, a person who performs or submits to sexual intercourse or deviate sexual conduct with a child under 14 years old, commits child molesting, a Class B felony, and a person who performs or submits to any fondling or touching with a child under 14 years old commits child molesting, a Class C felony. Under the bill, the age of the child changes to a child under 12 years old who is at least 5 years younger than the offender.

Also, under current law, a person at least 18 years old who performs or submits to sexual intercourse or deviate sexual conduct with a child at least 14 years old but less than 16 years old commits sexual

misconduct with a minor, a Class C felony, and a person at least 18 years old who performs or submits to fondling or touching with a child between 12 and 16 years of age commits sexual misconduct with a minor, a Class D felony. Under the bill, the age of the victim changes to a range from 12 to 16 years old with an age difference of 5 years.

The bill also creates a defense to prosecution of child exploitation, a Class C felony, and possession of child pornography, a Class D felony, if the defendant is less than 5 years older than the child and the person and the child are dating or have dated. It also creates a defense for vicarious sexual gratification, as long as the offense is not charged as a Class A or Class B felony, and performing sexual conduct in the presence of a minor, a Class D felony, if the person is less than 5 years older than the child and the person and the child are dating or have dated.

There are no data to indicate how these changes would affect the number of offenders committed to state correctional facilities each year. Under current law, on average between 2001 and 2005, there were 157 offenders a year committed to a Department of Correction (DOC) facility for child molesting as a Class B felony and 295 offenders a year committed for the Class C felony offense. There were an average of 131 offenders a year committed for Class C felony sexual misconduct with a minor and an average of 20 offenders a year committed for the Class D felony offense.

State correctional facility commitment data indicate that there were 4 offenders committed in 2004 and 8 offenders committed in 2005 for child exploitation and an average of 7 offenders a year committed to a state correctional facility between 2001 and 2005 for possession of child pornography. Also, on average between 2001 and 2005 there were 3 offenders a year committed to a state correctional facility for vicarious sexual gratification as a Class C felony and 2 offenders a year for either vicarious sexual gratification or performing sexual conduct in the presence of a minor, Class D felonies.

Depending on the mitigating and aggravating circumstances, a Class B felony is punishable by a prison term ranging from 6 to 20 years, a Class C felony is punishable by a prison term ranging from 2 to 8 years, and a Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor. The average expenditure to house an adult offender was \$22,734 in FY 2006. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,139. The average length of stay in DOC facilities for all Class B felony offenders is approximately 3.7 years, for all Class C felony offenders is approximately 2.0 years and for all Class D felony offenders is 10 months.

Explanation of State Revenues: If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class B, Class C, or a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), the judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

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